IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
CHAMBER SUMMONS NO.323 OF 2004
IN
WRIT PETITION NO.553 OF 2004

Bombay Gymkhana Ltd. & anr. Petitioners

Vs.

The Deputy Collector,
(Entertainment Tax), Mumbai & ors. Respondents

Mr.M.S.Doctor with Mr.Kalpesh Joshi i/b Malvi Ranchoddas & Co. for petitioners.

Mr.A.Sayed, AGP for Respondents.

CORAM: S.S.PARKAR & S.R.SATHE,JJ.

December 22, 2004.

P.C.

1. Heard both sides at length.

2. This Chamber Summons has been taken out for the amendment of the main petition filed last year challenging the liability of the petitioners to pay the entertainment duty under the provisions of the Bombay Entertainment Duty Act, 1923. The said petition had been filed as the respondents had served a notice dated 15/12/2003 on the petitioners threatening to take legal action in case entertainment programme was organised in the Gymkhana without prior permission of the Collector. When the petition was moved urgently before the Vacation Judge on 30th December 2003 a statement was made on behalf of the

respondents that if the petitioners furnished the details of the event, about the number of persons attending the function and the charges paid by them, there was no desire to seize any equipment or take other coercive measures. In view of that statement no interim order came to be passed as the petitioners had agreed to furnish the relevant information to the respondents-authority. The petition was, however, directed to be placed for admission on 19th January 2004. It seems that in spite of the direction to place the matter for admission on 19th January 2004 the matter did not appear on board for admission. It is not in dispute that the petitioners had submitted the requisite particulars to the respondents-authority.

3. The present Chamber Summons has been taken out as similar notices like the one served by the respondents on the petitioners last year being notices dated 22/11/2004 and 14/12/2004 have been served on the petitioners this year directing the petitioners to take prior permission from the office of the respondents in case any entertainment programme is being organized on the occasion of Christmas and new year's eve in the said Gymkhana. Apprehending that pursuant to the said notices the respondents may take any high handed or coercive action

against the petitioners, the present Chamber Summons has been taken out to amend the earlier petition and to challenge the notices dated 22/11/2004 and 14/12/2004 on the ground that the petitioners are not liable to pay any entertainment duty as claimed by the respondents.

4. Since the notices dated 22/11/2004 and 14/12/2004 are on the same lines as the one which was challenged in the above writ petition there can be no objection for allowing this Chamber Summons and to amend the petition for challenging the said notices. The petitioners have also in addition prayed for interim relief so that they are not stopped from holding the Christmas or new year programmes that may be held by the petitioners in the petitioners-Gymkhana between 24th December 2004 and 1st January 2005.

5. On behalf of the respondents it is contended that interim relief may be granted only on payment of security deposit. However, on behalf of the petitioners it is rightly submitted that though the particulars of the last year's programme were furnished to the respondents, they have not even given the rough estimate as to how much entertainment duty would be payable by the petitioners in case it is held that the petitioners are liable to pay the

entertainment duty under the aforesaid Act.

6. The petitioners are disputing that they are liable to pay any entertainment duty under the provisions of the above Act. The said point is the subject matter of challenge in the above petition. After interim order was passed on 30th December 2003 even the respondents had not taken any steps to obtain any orders in the pending petition. On behalf of the petitioners it is contended that if at all the entertainment duty is payable by them, the figure will be in some thousands only.

7. In the circumstances, we allow the Chamber Summons in terms of prayer clause (a). The amendment to the petition shall be carried out within two weeks from today and the amended copy shall be furnished to the respondents within one week thereafter. Ad-interim order in terms of prayer clause (c) is passed subject to the following conditions:

(i) The petitioners shall furnish to the respondents details of the programmes arranged by the petitioners for the period from 24/12/2004 to 31/12/2004 as regards the number of persons attending the said programme and the charges paid by them and also furnish the sample copy of

the tickets / entry passes issued by the petitioner Gymkhana by 3/1/2005.

(ii) The petitioners shall allow the officers of the respondents to inspect the premises of the petitioner Gymkhana during the function / programme during the aforesaid period and shall also give inspection of the record in that behalf when demanded by the respondents in accordance with the provisions of the Act and the Rules.

8. By consent of the parties the main petition shall be placed for admission before the appropriate Bench on 24/1/2005. The Chamber Summons shall stand disposed of accordingly.

(S.S.PARKAR,J.)

(S.R.SATHE,J.)